IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.259 OF 2007.

Vinita C.Palav. ... Appellant.

Versus.

Municipal Corporation of Greater Mumbai. ... Respondent.

Shri Dinesh C.Shah for the Appellant.

Mrs.Geeta Joglekar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 21st June, 2007.

P.C.:

1. The Appellant has tendered an undertaking on record. In the undertaking which is submitted on oath, the Appellant has stated that she is unconditionally withdrawing the suit and the Appeal in order to facilitate work of road widening by the Respondent. The undertaking is given to remove the notice structure on or before 30th November 2007. During the pendency of this Appeal, an order has been passed on 12th June 2007 by the Respondent on a notice under section 314 of the Mumbai Municipal Corporation Act, 1888. In the undertaking a solemn statement has been made that the Appellant will not challenge the legality and validity of the said order dated 12th June 2007.

2. The learned Advocate for the Respondent submitted that time to remove structure should not be granted. She submitted that all the adjoining structures have already been removed and the structure

of the Appellant is coming in the way of road widening.

3. It must be noted here that the suit structure has been protected since the year 2002. The Appellant is unconditionally withdrawing the suit. The due process of law is completed by the Respondent-Corporation by passing an order on 12th June 2007. The Appellant has undertaken not to challenge the validity and legality of the order dated 12th June 2007. In view of the said undertaking, the litigation will come to an end and there is no scope for the Appellant to file any further litigation. Considering all these aspects, a reasonable time to remove the structure deserves to be granted. The structure will have to be removed by the Appellant on or before 20th October 2007.

4. Hence the following order is passed:

(i) The undertaking of the Appellant is taken on record and marked "X" for identification. The undertaking and the statements made therein are accepted.

(ii) L.C.Suit No.4068 of 2002 is dismissed as unconditionally withdrawn.

(iii) The Appeal is also dismissed as withdrawn.

(iv) Notwithstanding the dismissal of the Appeal, time is granted to the Appellant to remove the suit structure till 20th October 2007. If the suit structure is not removed by the Appellant on or before 20th October 2007, it will be open for the Respondent-Corporation to immediately demolish the suit structure.

(v) It is stated that the Application made by the Appellant for allotment of permanent alternate premises is already rejected by the Respondent. The Appellant to is at liberty to apply afresh for the same purpose. This order will not prevent the Appellant from doing so. If such an application is made, the Respondent can always consider the same in accordance with law. It is however made clear that in the event the said application is not decided by the Respondent-Corporation by 20th October 2007, on that ground, time granted by this Court to remove the structure will not be extended.

(vi) The parties to act on an authenticated copy of this order.

Judge.